

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 05-131  
RE: JUDGE BRANDT C. DOWNEY, III

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Case No.: SC 05-2228

**RESPONSE TO THE HONORABLE  
BRANDT C. DOWNEY, III'S MOTION TO STRIKE**

Special Counsel for the Florida Judicial Qualifications Commissions responds to the Honorable Brandt C. Downey, III's ("Respondent") motion to strike, and says:

1. Respondent has moved to strike the last two sentences of paragraph 6 and the last sentence of paragraph 8 of the notice of formal charges. Respondent has also moved to strike the last sentence of paragraph 8 of the notice of formal charges, which states: "The withholding of the juror communication in this case led to your disqualification." Respondent states in his motion to strike that this sentence is "inaccurate and in conflict with the actual public record."

2. Rule 1.140, Florida Rules of Civil Procedure, made applicable to this proceeding by Rule 12(a), Florida Judicial Qualifications Commission Rules, states: "A party may move to strike or the court may strike redundant, immaterial, impertinent, or scandalous matter from any pleading at any time." "A motion to strike matter as redundant, immaterial or scandalous should only be granted if the material is wholly

irrelevant, can have no bearing on the equities and no influence on the decision.”

McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss, 704 So.2d 214, 216 (Fla. 2d DCA 1998).

Here, Respondent does not assert the contested sentences of paragraphs 6 and 8 of the notice of formal charges are wholly irrelevant, as Rule 1.140(f) requires, but instead states these sentences are inaccurate. Accordingly, Respondent’s motion to strike these sentences is inappropriate, and an appropriate response by Respondent if Respondent contends these allegations are inaccurate would be a denial in an answer to the notice of formal charges.

3. Moreover, Respondent’s motion to strike the last sentence of paragraph 8 should be denied because the public record shows that in the case of State of Florida v. Woodrow Wilson, Case No. CRC0300026CFANO-K, Circuit Court, Sixth Judicial Circuit, In and For Pinellas County, Florida, Respondent signed an order that granted the defendant’s motion to disqualify him from the case. The defendant’s motion to disqualify is attached as Exhibit 1, and the order granting defendant’s motion to disqualify is attached as Exhibit 2. Accordingly, the last sentence of paragraph 8 is accurate.

WHEREFORE, Special Counsel respectfully requests the Hearing Panel deny  
Respondent's motion to strike.

SMITH HULSEY & BUSEY

By \_\_\_\_\_  
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Judicial Qualifications Commission

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail to Brandt C. Downey, III, 315 Court Street, Room 421, Clearwater, Florida 33756, Thomas C. MacDonald, Esq., 1904 Holly Lane, Tampa, Florida 33629, John R. Beranek, Esq., Ausley & McMullen, P.A., Washington Square Building, 227 South Calhoun Street, Tallahassee, Florida 32302, this \_\_\_\_ day of March, 2006.

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Attorney

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